IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 29723 of 2007(L)

(ID.227/2006 of LABOUR COURT, ERNAKULAM)

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PETITIONER:

THE CHIEF GENERAL MANAGER,
(NOW DESIGNATED AS HEAD - RED),
INDIAN RARE EARTHS LIMITED, UDYOGAMANDAL,
ERNAKULAM DISTRICT.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.ANIL D. NAIR

RESPONDENTS:

1. THE SECRETARY,
IRE STAFF & WORKERS' UNION, C/O. INDIAN RARE
EARTHS LIMITED, UDYOGAMANDAL, ERNAKULAM DISTRICT.

2. THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P (C).NO. 29723 OF 2007 - L

Dated this the 8th day of October, 2007

J U D G M E N T

The petitioner challenges Ext.P8 award of the Central Government Industrial Tribunal -cum- Labour Court, Ernakulam in an industrial dispute which was originally I.D.No.19/1997 and later renumbered as I.D.No.227/2006. The issue referred for adjudication was as follows:-

> "Whether the action of the management of M/s.Indian Rare Earths Ltd., Udyogamandal in withholding one annual increment with cumulative effect in respect of Shri.Lalan Varghese is justified?"

Although the management did not produce the documents marked in the enquiry proceedings, on a submission made by the counsel for the management that since almost all the contentions of both parties are admitted and the issue is limited to the knowledge of the workman about the unauthorised occupation, even

without production of the documents, the matter was disposed of. Although four charges were levelled against the workman in question, even the management found the workman guilty only of the first charge which reads as follows:-

> "(1) When the officers of the company visited the Godowns in Willingdon Island on 10.11.994 one of the godowns was seen occupied by some unauthorized person and the workman had knowledge about it, but he failed to inform the company."

The Labour Court considered the matter and found as follows:-

> "But the Enquiry Officer found the workman guilty of only the first charge. Regarding other charges the Enquiry Officer found that the godown keeper was present on 10.11.1994 when the officers visited again in the afternoon and what was told by the workman in the morning was true. It was also found that it was not the duty or responsibility of the workman to inform the company about the absence of watchman in the godown. It has to be done by the godown

keeper. The tea vendor alleged to have been present when the officers visited the premises and he was preparing tea in the premises is not a true story. Since there was a water pipe in front of the godown the tea vendor had come there to wash his glasses and kettles and not for preparing tea. Thus the only aspect to be considered is whether the workman had knowledge about the unauthorized occupation of the premises by M/s.Pradeep Agencies and had he a duty to inform the company about it. It is the case of the workman that he was absent of 4th,5th,7th and 9th November,1994 from the office. 6th November was sunday. On 8th and 10th he was present. This is not disputed by the management. The office room attached to godown No.XXIV/1440 was occupied by M/s.Pradeep Agencies on 5.11.1994 admittedly. Their occupation was up to 10.11.1994 when the officers of the company visited the premises. The officers after having convinced of the unauthorized occupation called the police and in their presence the office room was sealed. Thus 5 days M/s.Pradeep Agencies was occupying the premises. Admittedly, on the day they occupied the premises the workman was absent, but the Godown Keeper was present.

The only possibility of knowing about the unauthorized occupation was only on 8th and 10th when the workman was present in the office. But it is relevant to note that unless some things were brought to the godown or taken out of the godown by M/s.Pradeep Agencies on 8th and 10th there was no chance for the workman to notice about the unauthorized occupation. After all what was kept in the office room of the Godown No.XXIV/1440 by Ms/Pradeep Agencies were a weighing machine, some tea powder and some furniture and nothing else. There is no evidence to show that on 8th and 10th M/s.Pradeep Agencies had been to the premises or they had brought or returned anything from the premises in order to invite the attention of the workman. It has also not come out that the godown keeper, Shri.K.C.Joseph had divulged to the workman about the occupation of the premises by M/s.Pradeep Agencies. Thus the workman had no chance of knowing about the unauthorized occupation without being informed either by the Godown Keeper or by the watchman. But the watchman was absent since 5.11.1994. The duty of the workman was only to attend to the clerical work. He was not put in charge of the godowns or the premises even in the

absence of the Godown Keeper. Therefore he was not duty-bound to look after godowns or enquire about the arrangements the company was making with regard to other godowns in the premises. It is relevant to note that the management admits that they used to lease out the other godowns on and off to different tenants. If that be so, it is all the more difficult for the workman to know whether there is a change of tenancy and whether the occupancy by a new tenant is authorized or unauthorized. It is the duty of the godown keeper to protect and preserve the godown premises. If the company permits any tenant to occupy the godowns the company informs the godown keeper and not the workman who is only a clerical staff. Unless there was a practice of officially informing the workman about the letting of premises to any third party, he was not bound to enquire about the arrangements made with regard to other godowns. Even if there is unauthorized occupation he would not know whether it is authorized or unauthorized without being informed either by the godown keeper or by the watchman. Having not assigned any duty with regard to other godowns he cannot be asked to explain about the occupation of other godowns by any one.

8. The management is referring to s-34 (b) of the Certified Standing Orders of the company which reads: "dishonesty in connection with the company's business or property". The question is – whether there is any dishonesty on the part of the workman? I have already mentioned that he is not assigned the duty of looking after the affairs of godowns, but only the shipping work in the office. There is another employee to look after the godowns. At any rate there is no dishonesty with regard to the business of the company. If so, the question is – whether there is any dishonesty with regard to the property of the company? Since he is not the custodian or the protector of the Godowns and unless he connived with the Godown keeper in making arrangements for letting the Godown to third party it cannot be said that there is any dishonesty on the part of the workman with regard to the property of the company. Not only about the property in Willingdon Island but even with regard to other properties and assets of the company also, as an employee, he may come to know about underhand dealings which are prejudicial to the interest of the company. But merely because he is an employee he is not bound to inform the management about

such dealings. Each one is assigned his duty and is bound to discharge that duty alone to the satisfaction of the employer. He is not supposed to poke his nose into the affairs of other employees or officers or matters. I do not think there is any dishonesty in connection with the property of the company by the workman. If so there is no legal obligation on his part to inform the company about the unauthorized occupation. If the management is referring to moral obligation then it has to be said that the moral obligation cannot cast legal liability. For breach of moral obligation, no legal action can be taken by the employer. That apart, the evidence and circumstances go to show that there was no possibility for the workman to know about the unauthorized occupation. First of all the occupancy was only for 5 days and during the 5 days he was present only on 2 days. On the day of occupation he was absent. That being the circumstances, the contention of the workman that he had no knowledge about the unauthorized occupation of premises by M/s.Pradeep Agencies is more probable than the case of the management. Assuming that he was aware even then he was not bound to inform the company and it had to be done by the concerned employee, the godown keeper.

> There is no violation of S-34(b) of Certified Standing Orders.
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> 9. The Enquiry Officer after holding that "strictly speaking he is not bound to look after the affairs of the godowns of the company" and "even though Mr.Lalan Varghese is not the godown keeper we have to presume that he is in the know of things in the godown" came to a conclusion that the workman had knowledge and he had failed to inform the company and it amounted to infraction of S-34(b) of Certified Standing Orders. There is no evidence on record to prove that there was any possibility for the workman to know about the unauthorized occupation. Therefore the finding recorded by the enquiry Officer is perverse. He had neither knowledge nor duty to inform the company about the unauthorized occupation. It follows therefore that the punishment imposed also cannot be sustained."

These findings of fact are under challenge before me. My jurisdiction to interfere with such findings of fact is only to the extent of ascertaining whether such findings of fact are perverse. On a reading of the above paragraphs, I am fully satisfied that the conclusion

arrived at by the Labour Court is not at all perverse. The Labour Court has given very cogent reasons for the conclusions arrived at and the evidence is discussed in detail. Even if, I could have come to a different conclusion on the same evidence, insofar as the conclusion arrived at by the Labour Court is also a possible view, I am not justified in interfering with such finding of facts. That being so, I am not inclined to interfere with the findings of the Labour Court and therefore, the writ petition is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED: 07-09-2007